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THE PROCEDURE FOR RECEIVING A STATEMENT CONCERNING THE PROPERTY OF THE DEBTOR

1. In the procedure of enforcement and security, as a separate civil judicial procedure, the acts are performed with the aim of a final realization or security of the claims of the enforcement creditor. In a situation when it is necessary to use coercion in order to realize the claims of the enforcement creditor which have already been determined by a judicial decision, the enforcement procedure is carried out.¹ This procedure is the last phase of the process of providing legal protection. It is performed in accordance with the principles of emergency and efficacy, so that within a reasonable time, as soon as possible, the determined subjective rights are realized by applying the means of execution regulated by law.

The rules to be acted in accordance with in the procedure of enforcement and security are determined by Law on Enforcement and Security of the Republic of Serbia² brought in 2011. This law introduced a reform of the executive procedures. Law on Enforcement and Security, as well as the previous laws in this field introduced numerous innovations in the procedure for enforcement and security. These innovations form the subject of critical analysis of the academic and professional public. Referring to the realization of the basic principles of the procedure of enforcement and security, the legislator has eliminated certain regulations existing in the previous law. Some of the regulations have been changed by the legislator, while some of them have been complemented. Certain rules applied in this civil judicial procedure result from the efforts to introduce substantially new institutes in the procedure of enforcement and security.³

2. The procedure for receiving a statement concerning the property of the debtor does not represent a substantially new institute in the law on the executive procedure. More accurately, the provisions of the Law on Executive Proceedings of the Republic of Serbia from 2004⁴ provided for a prolonged procedure of enforcement for the payment of monetary claims. This procedure regulated the payment to the enforcement creditor from the property of the debtor that was

¹ In the enforcement procedure, the application of the methods of coercion towards the debtor permits the realization of the executive credit of the enforcement creditor. This should be undoubtedly and authoritatively determined by a judicial decision which is a result of a previously performed procedure. On the other hand, the security procedure is performed with the aim of providing temporary legal protection when the conditions for conducting the enforcement procedure have not been fulfilled.

² See: *The Official Gazette of the Republic of Serbia*, no. 31/2011. In the text that follows: LES.

³ The legislator has eliminated the complaint as a regular legal remedy in the procedure of enforcement and security, the executive summary proceedings have been cancelled, executors have been introduced etc.

⁴ See: *The Official Gazette of the Republic of Serbia*, no. 125/2004. In the text that follows LEP 2004.

unknown to the creditor until that moment. The condition for performing this procedure was that the enforcement creditor had not been completely settled with in the previously conducted enforcement proceedings, due to the fact that he had not known that the debtor owned some other properties. The opinion of certain authors that this procedure used to have a corrective effect is completely true, as well as their opinion that the aim of this procedure was the realization of a certain number of goals: eventual settlement with the enforcement creditor from the property of the debtor that had not been known before; the pressure on the debtor to provide the court with the complete and true information concerning his property under threat of criminal liability, as well as the possibility that third parties are informed about the fact that the enforcement proceedings are being conducted against the debtor.⁵

This procedure was initiated due to a suggestion of the enforcement creditor who had not been settled with during the previously conducted enforcement of movables. The creditor could request that the debtor delivers a list of his complete property to the court. Further, he can also request enforcement on the movables of the debtor not known before.⁶

In case the requirements for conducting enforcement of the unknown movables are met, the court brings a decision requiring the debtor to submit to the court a statement about his property. The debtor is obliged to send the statement concerning his property to the court within ten days from the day of delivery of the decision. The statement has to be in written form and the signature of the debtor has to be certified.

When the debtor does not act according to the court order, the court can schedule a hearing and invite the debtor to give a statement concerning his property for the records.⁷ In case the debtor submits a statement concerning his property, the court delivers a copy of the received statement to the enforcement creditor. On the grounds of the statement, the enforcement creditor could suggest enforcement of one of the movables or rights from the list of property which had been unknown to him before.

The proceedings of the court are legally prescribed in cases the debtor has submitted incomplete or incorrect information concerning their property, concerning keeping books of the debtors, concerning complaint of the debtor to the registration in the book of debtors, and the suggestion of the debtor to be eliminated from the book of debtors.⁸

⁵ Keča, Ranko., *Građansko procesno pravo, Priručnik za polaganje pravosudnog ispita*, Pravni fakultet Beograd i Službeni glasnik Republike Srbije, Beograd, 2011, p. 519.

⁶ See: Stanković, Gordana., *Građansko procesno pravo, druga sveska, Vanparnično i izvršno procesno pravo*, Udruženje za građansko procesno i arbitražno pravo, Niš, 2007, p. 209.

⁷ The court could also bring a decision on apprehension of the debtor when he failed to appear at the scheduled hearing or when he did not submit a statement concerning his property afterwards.

⁸ See a detailed account in: Stanković, Gordana., – Petrušić, Nevena., *Novine u građanskom procesnom pravu*, Udruženje za građansko procesno i arbitražno pravo, Niš, 2005, str. 163; Stanković, Gordana., op. cit, p. 209-

3. The new LES of the Republic of Serbia determines the rules of the procedure for receiving the statement concerning the property of the debtor. In a considerably different and more complete way, the legislator regulates this institute of executive procedural law.⁹

In case the debtor's liabilities are cash benefits, the enforcement creditor can submit a claim for receiving a statement concerning the property of the debtor. It is necessary that the enforcement creditor has initiated the procedure of enforcement and security, so that consequently he can claim receiving a statement on the property of the debtor with a suggestion for enforcement during the procedure until its finalization.¹⁰

Both the executor and the court can initiate the procedure for receiving a statement concerning the property of the debtor. The claim for receiving a statement concerning the property of the debtor¹¹ can also be submitted by an executor under the authority of the enforcement creditor, in case he performs the enforcement. The court will, on the other hand, ex officio obtain the statement concerning the property of the debtor when it is necessary, in order to implement the decision on collection of fines.

Comparing the regulations of the new law with the LEP in 2004, we can conclude that the legislator has significantly changed the substance of this institute. First, the issue is not about a prolonged enforcement procedure where a submission of the statement concerning the property of the debtor could be requested, but about a special kind of procedure for receiving a statement concerning the property of the debtor. Second, it is not conditioned upon an already performed enforcement procedure and the fact that the enforcement creditor has not been settled with. On the contrary, at the moment of initiating the procedure of enforcement and security, the enforcement creditor can request submitting a statement concerning the property of the debtor. He can request the same thing during the entire procedure until its termination. Therefore, the failure of the enforcement creditor in the previous enforcement procedure is not mandatory, but the enforcement creditor is enabled to be informed about the property of the debtor in advance, as well as about the objects on which the enforcement can be conducted. This fact certainly contributes to an improved security of the enforcement creditor, but it also disables the debtor to simulate insolvency.

Third, according to the previous law, the enforcement creditor could initiate a prolonged enforcement procedure only if he has not been settled with in the enforcement procedure on movables. As the enforcement on the movables is only one of the means of enforcement

210; Keča, Ranko., op. cit, p. 519-521; Rajović, Veroljub., *Gradansko procesno pravo, Priručnik za polaganje pravosudnog ispita*, Projuris, Beograd, 2011, p. 238-239.

⁹ It is very interesting that neither the prolonged procedure from the LEP in 2004, nor the procedure for receiving the statement concerning the property of the debtor have attracted the attention of theoreticians. Thus, there is no academic analysis concerning this topic.

¹⁰ See: article 54, paragraph 2 LES.

¹¹ The law precisely defines the debtors that can not be asked for a statement concerning their property. They are: the Republic of Serbia, the autonomous provinces and the local governments (article 54, paragraph 5, LES).

in order to settle the monetary claims of the enforcement creditor, we can conclude that the enforcement creditor was limited concerning initiating this procedure. The new law prescribes that a claim can be submitted each time when it comes to monetary liabilities of the debtor, regardless the fact what kind of means of enforcement is going to be used in order to conduct the enforcement.¹²

Next, as compared with the previous legislature, the new law expressly envisages the possibility of initiating the procedure *ex officio*.

And finally, the legislator also gives a specific significance to this institute and to the statement of the debtor concerning his property due to the fact that regulations on the statement are contained in the part dealing with fines and court penalties. It seems that in this way the personal obligation of the debtor to submit a statement concerning his property is strengthened.¹³

4. In case the conditions are fulfilled, the executive court issues a decision ordering the debtor to submit a statement concerning his property.¹⁴ The debtor is invited to the court to give a statement for the records or to submit a statement concerning his property to the court in a sufficient number of copies within five working days.

On the occasion of delivering the decision, the court delivers the debtor a copy of the claim for receiving a statement concerning his property. Also, the court informs the debtor what the statement should contain, warns him about the fines if they do not act according to the court order and instructs him on the consequences that may be caused in case of providing insufficient or incorrect information in the statement. A particular complaint against this court decision is not allowed.

After ordering the debtor to submit a statement concerning his property, the conduct of the court depends on the fact whether the debtor has fulfilled the order. In case the debtor has not acted according to the court order, or has offered incomplete information concerning his property in the statement, the Executive Court issues a decision on fines to be paid by the debtor and acts according to the rules on imposition of fines and their reimposition in case the debtor fails to act according to the repeated court order.¹⁵

If the debtor has submitted the statement concerning his property, depending on the way of submitting the statement, the court delivers the enforcement creditor a copy of the statement concerning the debtor's property or a copy of the records containing the statement. Since there is a possibility that the court separates the procedure for

¹² This means that the enforcement creditor can submit a claim like this when it comes to the enforcement on real estate, monetary liabilities of the debtor, savings deposit of the debtor, etc.

¹³ See: Ristić, Vukašin., 'Rokovi i ročišta po novom Zakonu o izvršenju i obezbeđenju i njihov uticaj na trajanje postupka', *Pravni život* br. 11/2011, p. 862.

¹⁴ If the debtor is a legal entity, the decision is delivered to the person representing it. If the debtor does not possess the ability to act, the decision is delivered to his legal representative, while the court informs the guardian if it considers that the representative is reckless while protecting the interests of the debtor.

¹⁵ See: article 55, paragraph 3, LES.

receiving the statement on the property, the court will bring together the copy of the statement or the records containing the statement with the documents of the case because of which the statement was requested. The court will especially indicate the date of its delivery to the enforcement creditor.¹⁶

Once he receives the statement on the property of the debtor, the enforcement creditor may request its supplement or giving a new statement. Within five working days from the day of receiving the statement, the enforcement creditor may request the supplement of the statement or a new statement if the following conditions are fulfilled: the statement does not contain enough information to identify the property mentioned in it, a public i.e. legally certified document gives evidence that the debtor has offered incomplete or incorrect data in the statement which implies the impossibility of complete settlement of the demand from the property of the debtor known until that moment. In case these conditions are fulfilled the court issues a new decision which orders the debtor to deliver to the court a supplement of the statement or a new statement concerning his property.

In case that the enforcement creditor is satisfied with the given statement and he has not requested its supplement or submitting a new decision, and if the enforcement is conducted by court, he is obliged to suggest the means and subjects to execution within five working days from the day of receiving the document. If he fails to do it within the legally prescribed period the court suspends the execution, according to the regulation from the article 57, paragraph 5 LES.

5. The debtor's statement concerning his property has to be composed in accordance to the cogent norms of the law concerning its contents. The law precisely specifies the contents of the statement on the property of the debtor. The statement on the property of the debtor contains: 1) information about the debtor's things and rights that can be objects of execution, and especially about the movable and immovable property of the debtor; the cash funds that the debtor possesses at the moment of giving the statement; the deposit of the debtor; current accounts of the debtor; the rights to the securities and the rights from the securities; foundation (membership) rights to an economic association and the profit realized by the debtor using these rights in the last year; the average monthly earnings of the debtor in the last six months, the employer that the debtor realize the earnings from, duration and type of employment; claims of the debtor toward third parties, basis of claims, time of their maturity and collaterals; 2) information about the claims of third parties toward the debtor which are mature or are going to become mature in the following year and the information about the given collaterals; 3) information about enforcement actions lead against the debtor; 4) information about all the legal actions taken on the part of the debtor at the expense of their property after establishing the obligation in terms of which enforcement is requested (transfer of property rights with or without reimbursement or offering security for them or third parties); 5) the

¹⁶ Article 57, paragraph 1, LES.

signature of the debtor certified on the part of the court, unless the statement is given for the records in the presence of the judge.¹⁷

Beside these basic and mandatory elements of the contents of the statement concerning the property, it can contain different information needed for a particular object or right to be identified in the legal transactions.¹⁸

All these rules concerning the debtor's statement on the property are valid in those situations when the debtor possesses the property suitable for the enforcement. In case the debtor does not possess property that could be a subject of enforcement, he is obliged to note that fact expressly in the statement.

6. In certain circumstances, upon the request of the enforcement creditor, the court can decide to order the debtor to submit to the court the documents on the belongings and rights mentioned in the statement on the property. The debtor is obliged to submit the documents to the court within five days from the day of receiving the decision. In case the debtor does not act according to the court order, he will receive a fine. If the debtor fails to act according to the court order three times in a row, the court is allowed to pronounce imprisonment sentence of maximum thirty days, until he acts according to the order.¹⁹ A complaint against the decision on pronouncing the imprisonment sentence is permitted. If the debtor acts according to the court order and submits documents on the belongings and rights from the statement on the property until the day of the beginning to serve the sentence, the court will revoke his decision on imposing the imprisonment sentence immediately after receiving evidence that the debtor has acted according to the court order.²⁰

The debtor is obliged to provide in the statement true and complete information about their property and about the property suitable for being an object of execution. However, the debtor may give inaccurate and incomplete information in order to disguise his property and prevent the settlement of the enforcement creditor. According to the law, the debtor is considered to have given inaccurate or incomplete information concerning their property: if the

¹⁷ See: article 58 LES.

¹⁸ The statement can contain, in particular: designation of the address where the movables are located; information about the objects and rights being registered in the corresponding public Register; information from the cadastre, land Registry and other public records on the movable property on the part of the debtor or the information on the grounds and way of acquisition in case the immovability has not been registered in the cadastre, land Registry or other public records; information about the numbers of current accounts, savings accounts or deposits and the banks in which they are registered; information about third parties in whose favor the debtor has begun a legal action with regard to his own property and about the legal action that has been taken.

¹⁹ The imprisonment sentence is going to be carried out according to the legal regulations which regulate execution of criminal sanctions (article 59, paragraph 3, LES).

²⁰ If the debtor has accessed the execution of the sentence and he has acted according to the court order during the prison sentence, the court will bring a decision to order the debtor to be released from further prison sentence (article 59, paragraph 4, LES).

enforcement creditor, by a public document or a legally certified document, proves that at the time of forming the statement on the property the debtor possessed property or that before forming the statement they were taking legal actions with regard to his property that he has not mentioned in the statement, and from the property of the debtor known until that moment, i.e. which has been mentioned in the statement, the creditor's claims cannot be completely paid; if the third party, according to this law, proves that he possesses the property the debtor mentioned as his own in the statement. In case the court reasonably suspects that the debtor has, due to giving incomplete or incorrect information, brought or tried to decoy the enforcement creditor in order to avoid liability, it will submit a copy of documents to the prosecutor in charge. In this situation the court can also assign a fine to the debtor.

7. The executive court keeps records of debtors and a collection of documents. The book of debtors contains records with information about the debtor, basis of registration, date of registration, decision according to which the registration has been performed and the records number that the statement is being kept in the collection of documents. This collection of documents keeps original copies of the debtor's statements on property and the copies of the records containing statements on the property and the decision which determined the registration in the book of debtors. A copy of the final decision on registration into the book of debtors is enclosed to the collection of documents. When the basic condition for registration into the book of debtors is submitting the statement on property, the original of the statement, or the copy of the records containing the statement is enclosed.

The legislator exhaustively regulates which categories of debtors are registered into the book of debtors. They are: the debtor who has submitted the statement on the property with the inventory; the debtor who has not acted according to the court order on submitting a written statement on the property; the debtor who has submitted a statement on not possessing any property, and the debtor who has provided incorrect or incomplete information concerning their property.²¹ In the domain of registration into the book of debtors there are also some novelties introduced by LES in the place of the previous solutions. Namely, the regulations of the previous law stated that only a debtor who has submitted a statement on his property is registered into the book of debtors, while the debtors who have not submitted a statement on the property were left out of registration, as well as the debtors who have rejected to submit a statement or those who have declared not possessing any property. In that sense, these people were in a better position than the debtor who has submitted the statement on the property.²²

The court brings a decision on the registration into the book of debtors. The court brings a decision on the registration within five working days from the day of receiving the statement on the property,

²¹See: article 61, paragraph 4, LES.

²² Milošević, V. Miloš., 'Поступак за добијање исправе о имовини извршног дужника према скици Закона о извршењу и обезбеђењу', http://www.dobos.rs/baza_znanja, accessed on: 16. 02. 2012.

in case the debtor has submitted the statement; when the deadline for submitting the statement on the property is over, in case the debtor has missed the deadline; when the debtor has denied to give a statement on the property in the presence of a judge; when the court has been provided with evidence on the debtor's property found afterwards which the debtor failed to mention in the statement or on the legal actions that the debtor has taken with regard to their property before forming the statement. The reason for registration, as well as the deadline and conditions under which the debtor can ask for deletion of registration is stated in the decision on registration.²³

The court performs registration in the book of debtors within five working days from the day of validity of the decision on registration.²⁴ A distinctive fact is that the enforcement creditor whose request has initiated the delivery of the debtor's statement on the property does not acquire any special rights as a consequence of the debtor's registration in the book. Most importantly, by the act of registration, the enforcement creditor does not acquire priority in collection of claims from the property of the debtor mentioned in the statement.

8. In the enforcement and security procedure, the complaint represents a basic legal remedy. Therefore the debtor has a right to lodge a complaint to the decision on registration in the debtors' book within five working days from the day of delivery of the decision.²⁵ The debtor can lodge a complaint when he considers that the conditions for acting according to the request for receiving a statement on property were not fulfilled or if he considers that the decision on registration in the debtors' book should have been based on some other grounds. Considering its legal nature, the complaint is a remonstrative and suspensory legal remedy. Namely, it is decided upon by the chamber of the same court within five days from the day of delivery of the complaint and the very complaint postpones the registration of the debtor in the book of debtors.

Both the book of debtors and the collection of documents are public books. The court is obliged to provide insight into the book of debtors to every interested person or within five working days from the day of receiving the request to deliver notification on registration of a certain person in the book of debtors, time of registration and the grounds of it. In this way, everyone is enabled to be informed about the registration of the debtor in the book of debtors, since there is a possibility of their getting into a legal relationship with the debtor.²⁶

²³ If, after the registration in the same case, preconditions appear for a new registration based on other facts, the court will decide on new registration and simultaneously determine the deleting of the previous registration. In case the debtor's statement on the property is only amended afterwards, the previous registration is not deleted, but the decision defines the amended statement on the property to be enclosed to the collection of documents together with the documents of the previous registration.

²⁴ See: Ristić, Vukašin, *op. cit.*, p. 862 – 863.

²⁵ Article 63, paragraph 1, LES.

²⁶ The former LEP offered a different solution. Namely, the interested party had to prove a legal interest in order to be allowed to get insight into the book of debtors. In that way, the public was prevented from being informed about the property issues of the unconscionable debtors.

On the other hand, if a person makes it likely that there is some justified interest, they can demand that the court allows them to browse, photocopy or rewrite information from the collection of documents. The court must decide upon the request of that person within five working days from the day of receiving the request.

The publicity of the debtors' book and collection of documents has multiple significances. Third parties are informed about the fact that there is a procedure going on against the debtor, that they have registered their property, that they have not registered it or have avoided the obligation of giving a statement. Potential enforcement creditors have a possibility to obtain information about the financial standing of the debtor, so that they can avoid situations in which they can be deceived by insolvent and unconscionable debtors. Publicity is also an effective means of pressure on the debtor to pay their liabilities voluntarily, or, at least, register their property orderly.²⁷

For the sakes of unique records of legal entities registered in the book of debtors, a unique registry in the electronic form is kept for the territory of the Republic of Serbia and published on the Internet.²⁸

Due to the act of bringing a decision, the court also performs deletion of the registration from the book of debtors. This deletion from the book of debtors could be performed on the request of the debtor, enforcement creditor and ex officio. The court will perform this action on the request of the debtor: if the enforcement is completely and finally suspended, except if this was caused by lack of property that could be a subject to enforcement; in case the registration was performed because of the missing the deadline for giving a statement on the property; because of the denial of the debtor to give the statement; because of the providing incorrect or incomplete information or when the registration has been performed on the basis of the statement that the debtor does not possess any property; if, during the procedure, reasons that lead to the registration fail to exist any longer; if two years passed after the termination of the enforcement proceedings and there have not been subsequent registrations in the book of debtors for the same debtor or the subsequent registrations have been deleted; in case the registration has been performed on the basis of the statement mentioning the property if a year passed after the termination of the enforcement proceedings and there have not been subsequent registrations in the book of debtors for the same debtor or the subsequent registrations have been deleted. If subsequent registrations existed, their deletion can be demanded when the conditions for deletion of all the subsequent registrations have been completed.

Deletion of the registration from the book of debtors can also be performed on the request of the enforcement creditor who has initiated the registration. The deletion of the registration will be performed even before the planned deadlines, if the enforcement creditor submits to the court the statement denoting that their claims have been paid and that they agree to deletion. In special situations,

²⁷ Milošević, V. Miloš, op. cit, accessed on 16/02/2012.

²⁸ Article 67, paragraphs 1 and 2, LES.

when there is suspicion on the part of the court, it could ask for the statement of the enforcement creditor to be certified.

Deletion of the registration in the book of debtors could be ordered by the court *ex officio* if, in the same case, grounds appear for a new registration based on the different facts. Deletion will not be possible in case the debtor's statement on property has been only amended subsequently.²⁹

And finally, the legislator envisages the rules in case the debtor had fulfilled his obligation before the procedure of registration was finally terminated. If the debtor provides the evidence of fulfillment of the obligation to the court which keeps the book of debtors, the court will suspend the procedure of registration in the book of debtors *ex officio*. Alongside, the court will suspend all the previous actions and delete prospectively performed registrations. If it is reasonably suspected that the debtor has not fulfilled his obligation, the court can ask the enforcement creditor to submit documents as evidence that the claims have been completely settled.

9. The conclusion is clear. The legislator has amended the already known institute of prolonged enforcement proceedings from the LEP 2004 and regulated the procedure for receiving the debtor's statement concerning the property. This procedure has been arranged in a more complete and different way. It regulates who can begin the procedure, what are the deadlines for the debtor's acting according to the court order, what are mandatory and optional contents of the statement on property. Also, severe sanctions are planned for the debtor who fails to act in accordance with the court order or offers incomplete and incorrect information concerning his property. It has been defined that the court is obliged to keep the book of debtors and collection of documents, as well as to keep a unique registry of legal entities registered in the book of debtors. It is evident that this institute of executive procedural law is drafted with the aim of realizing the proclaimed goals of the legislator – giving the statement on the property of the debtor should permit obtaining of information about the property which can be a subject to enforcement and that possibility of concealing the property is minimized; influencing the debtor to fulfill his obligation voluntarily and providing publicity of unconscionable debtors and informing the prospective enforcement creditors they can enter into legal relationship with. However, a question is imposed why the legislator regulates that the enforcement creditor on whose request the debtor has given the statement on the property, by the very act of registration of the debtor in the book of debtors does not acquire priority in collecting his claims from the property of the debtor mentioned in the statement.

If the regulations provided in this Law are consistently applied and strictly respected, I consider that it would be beneficial for the realizing of the goals of the enforcement proceedings – efficient and economical conducting of the enforcement.

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²⁹ Article 64, paragraph 4, LES.

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